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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,004	12/21/2001	R. Randall Belk	72095CON1	8379
7590	08/04/2004		EXAMINER	
Charles E. Wands Allen, Dyer, Doppelt Milbrath, Gilchrist, P.A. P.O. Box 3791 Orlando, FL 32802-3791			TON, DANG T	
			ART UNIT	PAPER NUMBER
			2666	
			DATE MAILED: 08/04/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/026,004	BELK, R. RANDALL	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANG T TON	2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 21 December 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 15-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-23 is/are rejected.
- 7) Claim(s) 24-30 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4 and 7</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. Claims 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15 lines 10-11, "the nominal value" has no antecedent basis.

Claims 16-22 are rejected since they depend from claim 15.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 14 of U.S. Patent No. 6,370,125. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because of the following:

For claims 15-23, the claims 1-8 and 14 of patent number 6,370,125 disclose a method comprising the steps of :

(a) establishing a nominal buffer delay through the packet buffer for packets received from the network, and maintaining the nominal buffer delay in the absence of an increase in delay in receipt of packets from the network;

(b) in response to an increase in delay in receipt of packets from the network, increasing buffer delay to an increased buffer delay value corresponding to the increase in delay, and thereafter maintaining the increased buffer delay value in the absence of a further increase in delay in receipt of packets from the network;

(c) repeating step (b) as necessary for any further increase in delay in receipt of packets from the network, so as to maintain the value of buffer delay at a value associated with maximum encountered transport delay through the network (see claim 1 of the patent);

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in each of steps (b) and (c), in response to the increase in delay in receipt of packets from the network exceeding a maximum available delay through the packet buffer, discarding an oldest packet stored in the packet buffer (see claim 2 of the patent) ;

in each of steps (b) and (c), in response to the packet buffer becoming depleted of packets, selectively supplying no packet or reapplying a most recently received packet stored therein to the digitized packet signal processor (see claim 3 of the patent) ;

wherein step (a) includes establishing a minimum number of packets that must be present in the buffer before a packet therein is controllably read out for application to the digitized packet signal processor(see claim 4 of the patent) ;

wherein step (a) further includes, prior to handling a call, setting to prescribed reset values a buffer size counter whose contents are representative of how may packets are stored in the buffer, and a buffer flag associated with whether the minimum number of packets has been received (see claim 5 of the patent) ;

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wherein step (a) further comprises monitoring a communication channel of the network for receipt of an incoming voice packet within a respective packet interval and, in response to detecting the incoming voice packet, controllably modifying the contents of the buffer size counter, and storing the incoming voice packet in the buffer(see claim 6 of the patent);

wherein step (a) further includes changing the buffer flag from its reset value, in response to the buffer containing the number of packets that must be present before a packet is controllably read out therefrom, and controllably reading out a packet from the buffer for application to the digitized packet signal processor(see claim 7 of the patent);

wherein step (a) further includes establishing the maximum number of packets that can be stored in the buffer and, in response to an increase in delay in receipt of late arriving packets from the network for application to the buffer being such as to cause the contents of the buffer to exceed the maximum number, discarding an oldest packet stored in the buffer(see claim 8 of the patent);

(a) as packets are successively received from the network, storing the packets into the buffer, until a network

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transmission delay causes an interruption in receipt of packets from the network, thereby establishing a network throughput delay corresponding to the number of packets stored in the buffer at the occurrence of the interruption in receipt of packets from the network;

(b) in response to the interruption in receipt of packets from the network in step (a), sequentially reading out packets stored in the buffer for application to the digitized packet signal processor;

(c) in response to receipt of further packets from the network subsequent to the interruption in step (a), interrupting sequentially reading out of packets from the buffer in step (b), and storing the further packets into the buffer as the further packets are successively received from the network, until a network transmission delay causes an interruption in receipt of the further packets from the network, so as to increase the buffer throughput delay to an increased network transmission delay corresponding to the total number of packets stored in the buffer; and

(d) in response to the interruption in receipt of the further packets from the network in step (c), sequentially reading out packets stored in the buffer for application to the digitized packet signal processor(see claim 14 of the patent).

For claims 15-23, Applicant's claims 15-13 merely broaden the scope of patent number 6,370,125 claims 1-8 and 14 by eliminating the terms "maintaining the nominal buffer delay in the absence of an increase in delay in receipt of packets from the network " , "corresponding to the increase in delay " and "repeating step (b) as necessary for any further increase in delay in receipt of packets from the network, so as to maintain the value of buffer delay at a value associated with maximum encountered transport delay through the network " from claim 1 of the patent and the terms " of controlling storage into and readout of packets from said packet buffer, so as to optimize buffer throughput delay experienced by packets transmitted over said network " and " thereby establishing" from the claim 14 of the patent. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969);

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omission of a reference element whose function is not need would be obvious to one skilled in the art.

3. Claims 24-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANG T TON whose telephone number is 703-305-4739. The examiner can normally be reached on MON-WED, 5:30 AM-6:00 PM and Thur 5:30-9:30 A.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on 703-308-5463. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Ton



D. TON  
PRIMARY EXAMINER